

Appl. No.: 09/5586,601
Docket No.: 3562-0103P
Reply to Office Action of November 21, 2003

REMARKS

Claims 1-18 are pending in this application. Claims 1, 8, 11 and 17 are independent claims. By this amendment, claims 1, 4-6, 8, 9, 11, 15 and 17 are amended for clarity and new claim 18 is added. Reconsideration in view of the above amendments and following remarks is respectfully solicited.

The Claims Satisfy The Requirements Of
35 U.S.C. §112, 2nd Paragraph

The Office Action reject claims 8-10 under 35 U.S.C. §112, 2nd paragraph. This rejection is respectfully traversed.

Applicant respectfully submits that the amendment to claim 8 obviates the rejection of claims 8-10 under 35 U.S.C. §112, 2nd paragraph.

Accordingly, withdrawal of the rejection of claims 8-10 under 35 U.S.C. §112, 2nd paragraph is respectfully solicited.

The Claim Objections Are Obviated

The Office Action objects to claims 5 and 9 for minor informalities contained therein. This objection is respectfully traversed.

Applicants respectfully submit that the amendment to claims 5 and 9 obviates the objection of the claims.

Accordingly, withdrawal of the objection to claims 5 and 9 is respectfully solicited.

The Claims Define Patentable Subject Matter

The Office Action rejects: **(1)** claims 1, 3, 4, 8, 11, 13, 14 and 17 under 35 U.S.C. §103(a) as being unpatentable over U.S. Publication No. 2003/0193610 A1 to Nozaki et al. (hereafter Nozaki) in view of Japanese Patent No. JP 9-212620 to Tachibana et al. (hereafter Tachibana); **(2)** claims 2 and 12 under 35 U.S.C. §103(a) as being unpatentable over Nozaki in view Tachibana and further in view of U.S. Publication No. 2002/0126879 to Mihara et al. (hereafter Mihara); **(3)** claims 5-7, 15 and 16 under 35 U.S.C. §103(a) as being unpatentable over Nozaki in view Tachibana and further in view of U.S. Patent No. 6,226,396 to Marugame; **(4)** claim 9 under 35 U.S.C. §103(a) as being unpatentable over Nozaki in view Tachibana and further in view of Mihara and U.S. Publication No. 2002/0085747 to Yoshigahara et al. (hereafter Yoshigahara); and **(5)** claim 10 under 35 U.S.C. §103(a) as being unpatentable over Nozaki in view Tachibana and further in view of U.S. Patent No. 6,262,778 to Nonweiler et al (hereafter Nonweiler).

These rejections are respectfully traversed.

The Claims Fail to be Obvious over the combination of Nozaki and Tachibana

Applicant respectfully submits that the combination of Nozaki and Tachibana fails to teach or suggest each and every feature as set forth in the claimed invention.

One aspect of the present invention is to provide an image selecting apparatus for selecting a desired image from among a plurality of images obtained by continuously photographing a subject. An extractor extracts data of an aimed object from each

of the plurality of image. The aimed object corresponds to an independent object within the image at which a photographer aims. A condition-storing unit stores a plurality of predetermined selection conditions for a desirable aimed object. A selection unit selects at least one selection condition from among the plurality of predetermined selection conditions resulting in a selection of a desired image including a desired aimed object from among the plurality of images. The desired aimed object satisfies the at least one selection condition stored in the condition-storing unit.

In contrast to the present invention, Nozaki merely discloses continuously imaging an image, evaluating whether the shooting condition of the individual image is good or bad, and selectively obtaining image data of a good shooting condition. (see Nozaki, page 3, paragraphs [0044]-[0050]). However, Nozaki fails to teach or suggest extracting an aimed object from each of the plurality of images and a plurality of predetermined selection conditions for a desirable aimed object. Furthermore, Nozaki fails to teach or suggest selecting at least one selection condition resulting in a selection of a desired image including a desired aimed object. Instead, Nozaki is merely concerned with providing an electronic camera which can reliably obtain image data in a good shooting direction.

The Examiner alleges that Nozaki inherently teaches storing a predetermined selection condition. (see Office Action, page 3, paragraph 3). Applicant respectfully disagrees with this allegation. For example, Nozaki's conditions relate only to picture shooting conditions, i.e., blur amount, spatial frequency

component, the high area component amount of the spatial frequency, and release time lag (see Nozaki, page 2, paragraphs [0043]-[0046]), not conditions relating to a desirable aimed object within an image, such as whether a person is blinking, or smiling, or has red-eye, or whether the person is looking at the camera, for example. As such, not only does Nozaki fail to say anything about an aimed object, but Nozaki's conditions have nothing to do with the aimed object.

Applicant also respectfully submits that Tachibana fails to make up for the deficiencies found in Nozaki.

For example, like, Nozaki, Tachibana fails to teach or suggest storing a plurality of predetermined selection conditions for a desirable aimed object and selecting at least one selection condition from among the plurality of predetermined selection conditions resulting in a selection of a desired image including a desired aimed object.

Tachibana merely discloses storing different source face images, detecting expression features data from the source face images, setting a reference face, and selecting a source face image closes to a purpose. (see Tachibana, Abstract). In other words, Tachibana is merely concerned with face images, not an aimed object corresponding to an independent object within an image at which a photographer aims, such as a person in a room, a fish in an aquarium, or a bird on a branch, for example. In addition, Tachibana fails to disclose storing a plurality of predetermined selection conditions that relate to the aimed object. Tachibana merely stores a plurality of source face images and analyzes the expression feature data of the face images. However, no storing of

predetermined selection conditions relating to a desirable aimed object is taught by Tachibana. Tachibana only stores face images and only looks at the expression of the face.

To establish a *prima facie* case of Obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

Applicant respectfully submits that the combination of Nozaki and Tachibana fails to teach and suggest each and every feature as set forth in the claimed invention, for at least the reasons set forth above.

Furthermore, applicant respectfully submits that not only does the references fail to teach or suggest each and every feature as set forth in the claimed invention, but that one of ordinary skill in the art would not have been motivated to combine/modify the teachings of Nozaki with Tachibana because there is no teaching or suggestion in any of the references regarding how or why one would modify such systems to arrive at the claimed invention.

In addition, applicant respectfully submits that each of Mihara, Marugame, Yoshigahara and Nonweiler, either alone or in combination, fail to make up for the deficiencies found in the combination of Nozaki and Tachibana.

Applicant respectfully submits that independent claims 1, 8, 11 and 17 are allowable over the combination of Nozaki and Tachibana for at least the reasons noted above.

As for each of the dependent claims not particularly discussed above, these claims are also allowable for at least the reasons set forth above regarding their corresponding independent claims, and/or for the further features claimed therein.

Accordingly, withdrawal of the rejection of claims 1-17 under 35 U.S.C. §103(a) is respectfully requested.

Conclusion

In view of the foregoing, Applicant respectfully submits that the application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact Carolyn T. Baumgardner (Reg. No. 41,345) at (703) 205-8000 to schedule a Personal Interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment from or credit any overpayment to Deposit Account No. 02-2448 for any additional


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fees required under 37 C.F.R. \$1.16 or under 37 C.F.R. \$1.17;
particularly, the extension of time fees.

Respectfully submitted,
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